

CHAPTER.....

AN ACT relating to the Department of Transportation; providing for an additional Deputy Director for the Department; authorizing the Department, in carrying out the process for awarding design-build contracts, to request best and final proposals under certain circumstances; establishing procedures for requesting and evaluating best and final proposals; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 408.111 is hereby amended to read as follows:

408.111 1. The Department consists of a Director, ~~[-a Deputy Director.]~~ *two Deputy Directors*, a Chief Engineer and the following divisions:

- (a) Administrative Division.
- (b) Operations Division.
- (c) Engineering Division.
- (d) Planning Division.

2. The head of a division is an assistant director. Assistant directors are in the classified service of the State.

Sec. 2. NRS 408.116 is hereby amended to read as follows:

408.116 1. All legal notices, writs, service and process issued or ordered by a court of competent jurisdiction wherein the Department is named as a defendant must be personally served upon both the Director and the Chairman of the Board or, in the absence of the Director and the Chairman of the Board, the process must be served personally upon both the Secretary of State and *one of* the Deputy ~~[-Director.]~~ *Directors*.

2. All legal actions brought and defended by the Department must be in the name of the State of Nevada on relation of its Department.

3. This section is not a consent on the part of the Department to be sued.

Sec. 3. NRS 408.175 is hereby amended to read as follows:

408.175 1. The Director shall:

(a) Appoint one Deputy Director who in the absence, inability or failure of the Director has full authority to perform any duty required or permitted by law to be performed by the Director.

(b) *Appoint one Deputy Director for southern Nevada whose principle office must be located in an urban area in southern Nevada.*

(c) Employ such engineers, engineering and technical assistants, clerks and other personnel as in his judgment may be necessary to the proper conduct of the Department and to carry out the provisions of this chapter.

2. Except as otherwise provided in NRS 284.143, the Deputy ~~{Director}~~ *Directors* shall devote ~~{his}~~ *their* entire time and attention to the business of *the* office and shall not pursue any other business or occupation or hold any other office of profit.

3. *The Director may delegate such authority as may be necessary for the Deputy Director appointed pursuant to paragraph (b) of subsection 1 to carry out his duties.*

Sec. 4. NRS 408.178 is hereby amended to read as follows:

408.178 1. ~~{The}~~ *Each* Deputy Director:

(a) Is in the unclassified service of the State.

(b) Must hold a master's degree in public or business administration, hold the degree of bachelor of science in civil, structural, mechanical or industrial engineering, or be a licensed professional engineer.

(c) Must have at least 2 years of administrative experience as the assistant director, the chief engineer or the head of an Engineering or Planning Division of the Department, or have equivalent experience.

2. The Chief Engineer:

(a) Is in the classified service of the State.

(b) Must be a licensed professional engineer.

(c) Except as otherwise provided in subsection 3, must have at least 3 years of experience as the final engineering authority for a state's agency which has duties similar to those of the Department.

3. If the Director or *the* Deputy Director *appointed pursuant to paragraph (a) of subsection 1 of NRS 408.175*, is a licensed professional engineer, he may also act as the Department's Chief Engineer.

Sec. 5. NRS 408.180 is hereby amended to read as follows:

408.180 The Director and Deputy ~~{Director}~~ *Directors* shall each take the official oath.

Sec. 6. NRS 408.185 is hereby amended to read as follows:

408.185 1. The Director and Deputy ~~{Director}~~ *Directors* may use a facsimile signature produced through a mechanical device in place of their handwritten signatures whenever the necessity may arise.

2. Such a device must be of such a nature that the facsimile signature plate may be inserted and removed from the mechanical device only by use of two locking keys.

3. Such facsimile signatures must be made and used only under the personal direction and supervision of the Director ~~{and Deputy}~~

~~Director, respectively.] or Deputy Director whose signature the facsimile represents.~~

4. All of the facsimile signature plates and locking keys must at all times be kept in a vault, securely locked when not in use, to the end that any misuse, fraudulent use or other improper use is prevented.

5. Notwithstanding the provisions of this section, the Director or a Deputy Director and the State Treasurer may combine their facsimile signatures as provided in NRS 226.080.

Sec. 7. NRS 408.215 is hereby amended to read as follows:

408.215 1. The Director has charge of all the records of the Department, keeping records of all proceedings pertaining to the Department and keeping on file information, plans, specifications, estimates, statistics and records prepared by the Department, except those financial statements described in NRS 408.333 and the financial or proprietary information described in paragraph ~~[(d)] (c)~~ of subsection ~~[5] 6~~ of NRS 408.3886, which must not become matters of public record.

2. The Director may photograph, microphotograph or film or dispose of the records of the Department referred to in subsection 1 as provided in NRS 239.051, 239.080 and 239.085.

3. The Director shall maintain an index or record of deeds or other references of title or interests in and to all lands or interests in land owned or acquired by the Department.

4. The Director shall adopt such regulations as may be necessary to carry out and enforce the provisions of this chapter.

Sec. 8. NRS 408.3883 is hereby amended to read as follows:

408.3883 1. The Department shall advertise for preliminary proposals for the design and construction of a project by a design-build team in a newspaper of general circulation in this state.

2. A request for preliminary proposals published pursuant to subsection 1 must include, without limitation:

(a) A description of the proposed project;

(b) Separate estimates of the costs of designing and constructing the project;

(c) The dates on which it is anticipated that the separate phases of the design and construction of the project will begin and end;

(d) The date by which preliminary proposals must be submitted to the Department, which must not be less than 30 days after the date that the request for preliminary proposals is first published in a newspaper pursuant to subsection 1; and

(e) A statement setting forth the place and time in which a design-build team desiring to submit a proposal for the project may obtain the information necessary to submit a proposal, including, without limitation, the information set forth in subsection 3.

3. The Department shall maintain at the time and place set forth in the request for preliminary proposals the following information for inspection by a design-build team desiring to submit a proposal for the project:

(a) The extent to which designs must be completed for both preliminary and final proposals and any other requirements for the design and construction of the project that the Department determines to be necessary;

(b) A list of the requirements set forth in NRS 408.3884;

(c) A list of the factors that the Department will use to evaluate design-build teams who submit a proposal for the project, including, without limitation:

(1) The relative weight to be assigned to each factor pursuant to NRS 408.3886; and

(2) A disclosure of whether the factors that are not related to cost are, when considered as a group, more or less important in the process of evaluation than the factor of cost;

(d) Notice that a design-build team desiring to submit a proposal for the project must include with its proposal the information used by the Department to determine finalists among the design-build teams submitting proposals pursuant to subsection 2 of NRS 408.3885 and a description of that information;

(e) A statement that a design-build team whose prime contractor holds a certificate of eligibility to receive a preference in bidding on public works issued pursuant to NRS 338.1389 or 338.147 should submit a copy of the certificate of eligibility with its proposal; and

(f) A statement as to whether a bidding design-build team that is selected as a finalist pursuant to NRS 408.3885 but is not awarded the design-build contract pursuant to NRS 408.3886 will be partially reimbursed for the cost of preparing a final proposal *or best and final offer, or both*, and, if so, an estimate of the amount of the partial reimbursement.

Sec. 9. NRS 408.3886 is hereby amended to read as follows:

408.3886 1. After selecting the finalists pursuant to NRS 408.3885, the Department shall provide to each finalist a request for final proposals for the project. The request for final proposals must:

(a) Set forth the factors that the Department will use to select a design-build team to design and construct the project, including the relative weight to be assigned to each factor; and

(b) Set forth the date by which final proposals must be submitted to the Department.

2. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a design-build team pursuant to subsection 1, the Department shall assign, without limitation, a relative weight of 5 percent to the possession of a certificate of eligibility to receive a preference in bidding on public

works and a relative weight of at least 30 percent for the proposed cost of design and construction of the project. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular project because of the provisions of this subsection relating to preference in bidding on public works, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that project.

3. A final proposal submitted by a design-build team pursuant to this section must be prepared thoroughly, be responsive to the criteria that the Department will use to select a design-build team to design and construct the project described in subsection 1 and comply with the provisions of NRS 338.141.

4. After receiving the final proposals for the project, the Department shall:

(a) Select the most cost-effective and responsive final proposal, using the criteria set forth pursuant to subsections 1 and 2; ~~or~~

(b) Reject all the final proposals ~~or~~; *or*

(c) *Request best and final offers from all finalists in accordance with subsection 5.*

5. *If the Department determines that no final proposal received is cost-effective or responsive and the Department further determines that requesting best and final offers pursuant to this subsection will likely result in the submission of a satisfactory offer, the Department may prepare and provide to each finalist a request for best and final offers for the project. In conjunction with preparing a request for best and final offers pursuant to this subsection, the Department may alter the scope of the project, revise the estimates of the costs of designing and constructing the project, and revise the selection factors and relative weights described in paragraph (a) of subsection 1. A request for best and final offers prepared pursuant to this subsection must set forth the date by which best and final offers must be submitted to the Department. After receiving the best and final offers, the Department shall:*

(a) Select the most cost-effective and responsive best and final offer, using the criteria set forth in the request for best and final offers; or

(b) Reject all the best and final offers.

6. If the Department selects a final proposal pursuant to paragraph (a) of subsection 4 ~~or~~ *or selects a best and final offer pursuant to paragraph (a) of subsection 5*, the Department shall hold a public meeting to:

(a) Review and ratify the selection.

(b) ~~Award the design-build contract to the design-build team whose proposal is selected.~~

~~—(e)~~ Partially reimburse the unsuccessful finalists if partial reimbursement was provided for in the request for preliminary proposals pursuant to paragraph (f) of subsection 3 of NRS 408.3883. The amount of reimbursement must not exceed, for each unsuccessful finalist, ~~{three}~~ 3 percent of the total amount to be paid to the design-build team as set forth in the design-build contract.

~~{(d)}~~ (c) Make available to the public a summary setting forth the factors used by the Department to select the successful design-build team and the ranking of the design-build teams who submitted final proposals ~~{ }~~ *and, if applicable, best and final offers*. The Department shall not release to a third party, or otherwise make public, financial or proprietary information submitted by a design-build team.

6. A contract awarded pursuant to this section must specify:

(a) An amount that is the maximum amount that the Department will pay for the performance of all the work required by the contract, excluding any amount related to costs that may be incurred as a result of unexpected conditions or occurrences as authorized by the contract;

(b) An amount that is the maximum amount that the Department will pay for the performance of the professional services required by the contract; and

(c) A date by which performance of the work required by the contract must be completed.

7. A design-build team to whom a contract is awarded pursuant to this section shall:

(a) Assume overall responsibility for ensuring that the design and construction of the project is completed in a satisfactory manner; and

(b) Use the workforce of the prime contractor on the design-build team to construct at least 15 percent of the project.

Sec. 10. This act becomes effective July 1, 2003.